

## Office of the Secretary of Defense

## § 275.11

(3) When a formal written request is issued to a financial institution, a copy of the request shall, at the same time or before, be personally served upon, or mailed to the customer's last known address unless a delay of customer notice has been obtained under §275.12. The notice to the customer shall be in a format similar to enclosure shall be personally served at least 14 days or mailed at least 18 days prior to the date on which access is sought.

(4) The official who signs the customer notice shall be designated to receive any challenge from the customer.

(5) The customer shall have 14 days to challenge a notice request when personal service is made and 18 days when service is by mail.

(6) Components shall establish procedures to ensure that no access to financial records is attempted before the expiration of the pertinent time period while awaiting receipt of a potential customer challenge, or prior to the adjudication, prescribed by 12 U.S.C. 3410, of any challenge made.

(7) When a customer fails to file a challenge to access to financial records within the pertinent above time periods, or after a challenge is adjudicated in favor of the law enforcement office, the head of the office, or a designee, shall certify in writing to the financial institution that such office has complied with the requirements of 12 U.S.C. 3401 et seq. No access to any financial records shall be made before such certification is given.

(c) *Certification.* Prior to obtaining the requested records under §275.9 (a)(2) and (a)(3), a certification of compliance with 12 U.S.C. 3401 et seq. and Enclosure 4 of this part, shall be provided to the financial institution as a prerequisite to obtaining access to financial records.

(d) *Annual report.* The annual reporting requirements of §275.14 shall apply to access procedures under paragraph (a) and (b) of this section.

[45 FR 17576, Mar. 19, 1980, as amended at 48 FR 20228, May 5, 1983. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

### § 275.10 Requests for financial records in connection with foreign intelligence and foreign counterintelligence activities.

(a) Except as specified in paragraph (b) of this section, nothing in this part shall apply to requests for financial records in connection with authorized foreign intelligence and foreign counterintelligence activities as defined in E.O. 12036, January 24, 1978.

(b) When a request for financial records is made under paragraph (a) of this section, a Component official designated by the Secretary of Defense, the Secretary of a Military Department, or the Head of the DoD Component authorized to conduct foreign intelligence and foreign counterintelligence activities shall certify to the financial institution that the requesting Component has complied with the provisions of 12 U.S.C. 3401 et seq. Such certification, in a format similar to enclosure 4 of this part, shall be made before obtaining any records.

(c) A Component requesting financial records under paragraph (a) of this section, may notify the financial institution from which records are sought that section 3414(3) of 12 U.S.C., prohibits disclosure to any person by the institution, its agents, or employees that financial records have been sought or obtained.

(d) The annual reporting requirements of §275.14 shall apply to any request for access under paragraph (a) of this section.

[45 FR 17576, Mar. 19, 1980. Redesignated and amended at 56 FR 57984, Nov. 15, 1991]

### § 275.11 Emergency access procedures.

(a) Except as provided in paragraph (b) and (c) of this section, nothing in this part shall apply to a request for financial records from a financial institution when the law enforcement office making such request determines that a delay in obtaining access to such records would create an imminent danger of:

- (1) Physical injury to any person.
- (2) Serious property damage.
- (3) Flight to avoid prosecution.